

EXHIBIT “C”

Steven, M. Wenner, M.D.
December 15, 2008



ORIGINAL

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COURT OF COMMON PLEAS

PHILADELPHIA COUNTY - CIVIL DIVISION

DOCKET NO. 02389

GEOFFREY CROWTHER,

Plaintiff,

Vs.

CONSOLIDATED RAIL CORPORATION

and CSX TRANSPORTATION, INC.,

Defendants.

DEPOSITION OF STEVEN M. WENNER, M.D.

New England Orthopedic Surgeons

300 Birnie Avenue

Springfield, Massachusetts

December 15, 2008 5:25 p.m.

Jonathan P. Lodi

Court Reporter

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1 years in orthopedic surgery, and one year in
2 surgery of the hand. I entered practice in July
3 of 1980 doing orthopedic surgery and surgery of
4 the hand. About ten or twelve years later, I
5 limited myself only to surgery of the hand,
6 exclusively to surgery of the hand, and have
7 continued to do that since that time.

8 Q. And are you board certified?

9 A. I am.

10 Q. And is that in orthopedic surgery?

11 A. It's in orthopedic surgery. And I
12 have what's called a certificate of added
13 qualifications in hand surgery.

14 Q. And have you conducted any research or
15 written any papers?

16 A. I have.

17 Q. And do any of those relate to
18 repetitive stress injuries?

19 A. They do not.

20 Q. Anything that deals with railroad
21 work?

22 A. No.

23 Q. And have you been an expert witness in
24 the past, sir?

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1 Q. And in state court or Federal court?

2 A. I don't know.

3 Q. And was that in a medical malpractice
4 case?

5 A. I think that they -- I don't think
6 they were medical malpractice cases. I think once
7 or twice, for personal injuries, as an expert.

8 Q. And do you recall the outcome of the
9 cases in which you testified?

10 A. I don't.

11 Q. Do you have any connection with the
12 railroad industry?

13 A. I don't.

14 Q. Family, friends, anyone else?

15 A. I took the train to New York last
16 Friday. Other than that, that's it.

17 Q. And it's my understanding that you
18 authored a report dated November 11th and an
19 addendum dated November 30th?

20 A. Correct.

21 Q. And were you paid by Mr. Joyce's
22 office in that record?

23 A. I believe I was.

24 Q. And one of the things that I saw with

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1 result of what he does at work, "I cannot state
2 whether it is or isn't."

3 Basically, my understanding is that
4 you don't have an opinion, within a reasonable
5 degree of medical certainty, as to whether or not
6 his job duties caused his left thumb arthritis, is
7 that correct?

8 A. Caused as the primary event; you don't
9 mean aggravated?

10 Q. No. I mean caused as a primary event.

11 A. I can't say for sure.

12 Q. And you can't say within a reasonable
13 degree of medical certainty, correct?

14 A. Yes.

15 Q. And in the addendum report -- well,
16 let me ask you this: Did you send off this letter
17 to Mr. Joyce's office?

18 A. I did.

19 Q. And then were you contacted later to
20 write an addendum report?

21 A. Well, I was asked if I was willing to.

22 Q. Okay. And what do you mean by that?

23 A. Well, I wasn't told to write one.

24 Q. Oh, I'm sorry. You're right.

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1 A. I don't.

2 Q. And have you relied on any particular
3 literature in coming to your opinion that there
4 was a biological worsening?

5 A. Well, you know, if you're asking have
6 I relied on a specific article that says that this
7 -- if you do this -- then here's the outcome of
8 it, no. If you're referring to am I familiar with
9 literature that describes the natural biological
10 processes and disease states, their typical
11 evolution, what factors may aggravate them,
12 contribute to their worsening, et cetera, there's
13 a whole body of medical literature about that.
14 You know, that's what we learn in school and in
15 residencies.

16 Q. Is there a leading article that you're
17 aware of?

18 A. If there is, I couldn't quote it to
19 you. Sorry.

20 Q. And fair to say that there's no
21 articles listed in your report, right?

22 A. Correct.

23 Q. And I didn't see any reference that
24 you looked at any particular book, journal, or

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1 **anything like that, correct?**

2 A. That's correct.

3 Q. And as you sit here today, you can't
4 **name any of those studies, is that right?**

5 A. That's correct.

6 Q. And were you aware of the type of job
7 **duties that Mr. Crowther was doing when he**
8 **presented to you for the first time I think in**
9 **September of 2005?**

10 A. I was aware of them. And it was 2005.

11 Q. Okay.

12 A. And it looks like it was September.

13 Q. Okay. Do you know any specific jobs
14 **that he was doing at that time that --**

15 A. Well, I had it -- my understanding was
16 that he was working on the Railroad and repairing
17 track; repairing, laying, et cetera, track.

18 Q. And is that the sum and substance of
19 **your knowledge of his job duties?**

20 A. Well, that's the sum and substance of
21 what it is now. I've taken care of some number of
22 railroad workers over the years, and I've listened
23 to what they describe as that type of work, so I
24 have a little bit of a sense of it.

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1 about his job, other than what he told you?

2 A. I don't think so.

3 Q. So fair to say you didn't go out and
4 see the type of work that Mr. Crowther did?

5 A. I did not.

6 Q. And you've not seen the videotape of
7 the type of job he did?

8 A. I have not.

9 Q. And I assume that you've not seen any
10 ergonomic assessments of the work he did?

11 A. I have not.

12 Q. And you've not performed any type of
13 scientific analysis of exposure he had on the job,
14 correct?

15 A. Correct.

16 Q. And I guess the same would go for not
17 having done any analysis on the type of rest
18 periods and things like that, or non-work
19 exposures he had?

20 A. Correct.

21 Q. And fair to say you wouldn't know how
22 much time during a given shift that Mr. Crowther
23 might use his hands?

24 A. Correct.

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1 over a period of years from sustained heavy use of
2 it in the face of that.

3 Q. But it's still your opinion that you
4 can't say whether or not work caused that?

5 A. A ligament -- whether it caused a
6 ligament injury?

7 Q. Or the arthritis.

8 A. Correct.

9 Q. And you'd agree with me that you're
10 not an occupational medicine doctor, are you?

11 A. I am not.

12 Q. And you're aware of that specialty?

13 A. I am.

14 Q. And you would agree, sir, that you're
15 a treating physician; that means that you
16 basically see patients, spend your days with
17 patients and perform surgery, is that correct?

18 A. That's correct.

19 Q. And that you don't routinely examine
20 workers to determine if their work caused a
21 problem they might be having, would you agree?

22 A. I'm not sure I understood the
23 question.

24 Q. That you don't routinely examine

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1 workers to determine if their work may have caused
2 a particular problem they were having?

3 A. I'm not sure I would agree with that
4 entirely. I examine people who are injured on the
5 job, a variety of jobs, regularly. And I examine
6 -- and I'm frequently asked the question: Did the
7 particular job that they did cause or result in a
8 problem that they have.

9 Q. And in your practice, do you
10 ordinarily go out and review the job or get more
11 information about jobs?

12 A. I never go out and review the job.
13 And I frequently get written reports about what
14 they do on their job.

15 Q. And did you get a written report of
16 what Mr. Crowther did on his job?

17 A. I don't recall having gotten one.

18 Q. Okay. And it certainly isn't part of
19 your file, is that correct?

20 A. Correct.

21 Q. And so at least in this case, in that
22 minor instance you deviated from your normal
23 practice, would you agree?

24 A. No. I didn't say that was my normal

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1 arthrodesis doesn't ordinarily result in any
2 future surgery, is that right?

3 A. That's correct.

4 Q. And you don't expect any future
5 surgery with regard to Mr. Crowther?

6 A. Regarding his thumb?

7 Q. Regarding his thumb. I'm sorry.

8 A. Correct.

9 Q. You've not treated him for anything
10 else, other than his hand?

11 A. No, I don't believe I have.

12 Q. And are you aware of any scientific
13 literature that has shown that the type of work
14 duties that Mr. Crowther does may cause or
15 contribute to the development of problems in the
16 left metacarpal joint?

17 A. No, not specific literature addressing
18 that.

19 Q. Are you aware of any scientific
20 literature that shows that there are specific
21 changes that could be done to the type of work
22 that Mr. Crowther did, that would prevent him from
23 developing the type of problems he had in his left
24 thumb?

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1 A. I'm not.

2 Q. Is there any way to prevent the type
3 of injury or the type of condition that Mr.
4 Crowther had in his left thumb?

5 A. Well, I think if none of those factors
6 that I mentioned to you before happened to you in
7 your lifetime, then you are likely not to get this
8 kind of arthritis.

9 Q. Could you explain -- well, maybe
10 that's a bad word, a bad word choice.

11 It's my understanding that, based on
12 all the records I've seen anyway, that the problem
13 he was having was in his non-dominant left hand,
14 is that right?

15 A. Yes.

16 Q. And he didn't have similar problems in
17 his metacarpal joint of his right thumb, correct?

18 A. Not that I know of, right.

19 Q. And that it's my understanding that,
20 unless -- please correct me, if I'm wrong, Tom --
21 but he's right-handed, and that's his dominant
22 hand?

23 A. I think so.

24 Q. And does it make any sense why the

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1 A. Chopping wood, if you do it, you know,
2 once a month for two hours, it would make it hurt,
3 but it probably wouldn't be a true aggravating
4 factor.

5 Q. Okay. How about --

6 A. If you chop wood every day, all day,
7 that's a different story.

8 Q. How about, like, riding a bicycle?

9 A. No, I don't think so.

10 Q. And I apologize if I'm repeating, but
11 in terms of the things that you reviewed, the
12 materials you reviewed, I think we were in
13 agreement that you've not seen any objective
14 scientific change in the arthritis that was
15 contained in his left thumb as a result of his
16 job, is that right; we don't have any objective
17 scientific evidence that the disease process was
18 actually increased due to his work, is that right?

19 A. I think that's correct.

20 Q. If you give me just a minute or two, I
21 want to maybe just go through my notes. And I
22 understand you've got to be out of here in fifteen
23 minutes, so I'm going to try to speed it up.

24 A. Go ahead.

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1 comparison to the right hand --

2 A. Correct.

3 Q. -- in terms of the range of motion;
4 but did you look for arthritic changes in the
5 other hand, as well?

6 A. I would have been looking for that.

7 Q. And in terms of his job duty, was
8 there anything in particular that you thought was
9 problematic, in terms of his hand use
10 specifically, causing a problem in terms of his
11 symptoms or aggravation as you've stated? because
12 I understand you've not given a causation opinion,
13 but you've said there's an aggravation of some
14 sort.

15 A. Right.

16 Q. What was it specifically about his job
17 that aggravated his thumb?

18 A. Well, the nature of gripping large
19 heavy objects is you have to wrap your thumb
20 around it. And so if you haven't -- and that
21 joint, his arthritic metacarpal phalangeal joint,
22 will make contact with any large handle. That's
23 how you're -- that's how your hand grips
24 something. It always makes contact there. So a

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1 large handle, for example, would be the handle of
2 a sledgehammer, that he would make contact with,
3 and that might be a problematic thing for him to
4 do. A large handle might be the handle on a big
5 pair of pliers, or maybe large wrenches.

6 Q. And it's those things that you think
7 aggravated his pre-existing condition?

8 A. I think so.

9 Q. And was there anything the Railroad
10 could have done to prevent him from aggravating
11 it; I mean, what could they have done, in your
12 estimation?

13 MR. JOYCE: Objection. He's not here
14 as our ergonomic expert; he's here as a
15 medical expert, so I think that opinion is
16 outside the scope of his testimony. It's a
17 negligence question.

18 Q. (By Mr. Hall) Are there any specific
19 changes that the Railroad could have made in his
20 job, that could have prevented him from having an
21 aggravation, as you've described it?

22 A. I guess not having him used those
23 tools.

24 Q. So anything that would have him